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Applicability: DDSN Regional Centers, DSN Boards and Contracted Providers of Day, Case Management, Residential Habilitation and Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID) Services

PURPOSE:

Since 2009, the Department of Disabilities and Special Needs (DDSN) has embraced the Employment First approach to provision of service delivery. Employment First assumes that individual integrated employment at or above minimum wage is the preferred outcome for working age adults, regardless of disability. This assumption should be the foundation for assessment and planning for individuals receiving services through DDSN (in particular Employment Services Individual). The purpose of this directive is to articulate the philosophy of the Agency regarding Employment First.

GENERAL:

The value of employment, to the individual employee as well as to society, is both measurably significant and immeasurably meaningful. Society values work and individuals who work. Often, by-products of working include a sense of accomplishment and an increased sense of competence and self-worth. Employment/occupations often give individuals a sense of identity and shape how others perceive them. Additionally, being employed often provides opportunities

to develop new relationships and accrue social capital. Ultimately, employment usually results in personal enrichment, expanded opportunities to exercise choice and greater economic independence. Employment of individuals with disabilities also benefits society by adding their contributions to the economy, adding diversity to the workforce, reducing reliance on government-sponsored benefits and developing universal designs that result in greater productivity and efficiency for the workforce as a whole.

Legislation, regulation and litigation on both the federal and state level affirm that agencies and systems serving those with disabilities have a mandate to provide services that are tailored and customized to an individual's strengths, preferences and interests and that include needed and desired employment supports. For example:

- The United States Supreme Court ruled in *Olmstead v. L.C.* (July 1999) that states must administer services for individuals with disabilities in the most integrated settings appropriate to their needs, as opposed to unnecessarily segregating them from the broader community. The United States Department of Justice (DOJ) has advised that this mandate applies to "all facets of life, including employment, public accommodations, and services, programs and activities of state and local governments... including segregated, non-residential employment and vocational programs such as sheltered workshops (*"Statement of Interest of the United States of America Lane v. Kitzhaber,"* April 20, 2012)." The DOJ has also stated that "Segregated settings include, but are not limited to,...settings that provide for daytime activities primarily with other individuals with disabilities (*"Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C."* 3, June 22, 2011)."
- S.C. Code Ann. § 44-20-20 (2018) and § 44-20-390 (2018) require that services be planned and rendered to assist those eligible for DDSN services in developing to the fullest extent possible in the least restrictive environment available.
- The Center for Medicare and Medicaid Services (CMS) issued a Final Rule on Home and Community Based Services (HCBS) in March 2014 requiring settings in which HCBS are provided to be fully integrated into the community and offer supports needed to pursue, obtain and maintain individual community employment.
- The Workforce Innovation and Opportunity Act of 2014 (WIOA) increases access for individuals with disabilities to employment and training services, beginning with pre-employment transition services for youth with disabilities to prepare for, obtain and retain competitive, integrated employment. WIOA also establishes an Advisory Committee to develop strategies for increasing employment outcomes for individuals with disabilities.

While all of the DDSN Day Services (i.e., Employment Services, Career Preparation, Community Services, Day Activity and Support Center) can be provided in integrated community settings and can lead to meaningful outcomes, DDSN promotes employment outcomes (and individual employment in particular) as the most meaningful outcomes for adults

~~of working age.~~ While all DDSN-sponsored Employment Services (i.e., Individual and Group) and Day Services (i.e., Career Preparation, Community Services, Day Activity and Support Center) can be provided in integrated community settings and can lead to meaningful outcomes, DDSN believes that employment outcomes (and individual employment in particular) for adults of working age are the most meaningful.

DEFINITIONS:

Competitive Integrated Employment

As defined by the (WIOA)¹, competitive integrated employment is work that:

- i. Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:
 - A. Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;
 - B. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
 - C. In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and
 - D. Is eligible for the level of benefits provided to other employees; and
- ii. Is at a location:
 - A. Typically found in the community (A setting in the competitive labor market. Settings established specifically for the purpose of employing individuals with disabilities are not integrated settings because they are not in the competitive labor market.); and
 - B. Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g., customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

- iii. Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

¹<http://www.wintac.org/topic-areas/resources-and-strategies-for-competitive-integrated-employment#1cie>

Group Employment

- Individuals who work in a group setting, requiring on-going employment supports, earning at least minimum wage while working in an integrated setting, paid by either the business or a service provider from revenues earned via contracts with business/government entities.

Employment

- ~~Working for at least minimum wage in an integrated setting can be individual (paid directly by the employer), group (paid by a service provider from revenues earned via contracts with business/government entities) or self-employment (including sole proprietorships and partnerships).~~

Integrated Setting

- Typical workplace where the majority of individuals employed do not have disabilities and where the employee with a disability has opportunities to interact with coworkers, vendors, sub-contractors, customers and/or the public.

POLICY:

Employment Services - Individual, provided in integrated settings, is the first and preferred Day Service option to be offered to working age youth and adults (ages 16 – 64) who have exited school and who are eligible for DDSN services. No other DDSN Day Service, including Career Preparation, should be considered, or implied to be, a prerequisite to receiving Employment Services - Individual. Success in the provision of Employment Services – Individual is dependent upon a holistic, person-centered approach to removing barriers through an array of supports. No one staff person can shoulder this responsibility alone. Rather, other areas of the DDSN service delivery system must be involved in promoting and assuring the provision of desired and needed employment supports for DDSN adults of working age. Some specific responsibilities are as follows:

Case Management Providers

Employment First is about cultivating the expectation that individuals with disabilities can make a positive contribution in most workplaces. Many individuals who may not be “qualified” for established jobs as typically described would be quality employees if customized jobs were developed to match their strengths, interests and skill sets. And, contrary to popular myths, most individuals with disabilities can work and improve their financial situation while maintaining necessary benefits (e.g., Medicaid, SSI, etc.) - usually without limiting their hours and wages.

With proper assistance, benefits can be managed in such a way that the individual's standard of living is increased because wages are combined with needed benefits. Most adults will be better off financially by working. Case Managers can play a central role in dispelling myths, alleviating fears of losing public benefits, correcting misperceptions and raising expectations.

Employment aspirations should be discussed at the first contact, and regularly and consistently during subsequent contacts, with those of working age. Case Managers should be generally knowledgeable about the different types of government benefits (e.g., Supplemental Security Income (SSI), Supplemental Security Disability Income (SSDI), Supplemental Nutrition Assistance Program (SNAP), etc.) and work incentives (e.g., Impairment-Related Work Expenses (IRWE), Plan to Achieve Self-Support (PASS), Blind Work Expense, etc.). Case Managers should also be aware of available resources to which the individual could be referred or linked when concerns regarding paid employment are expressed (e.g., Community Work Incentive Coordinators/benefits counseling, Centers for Independent Living, etc.). Anyone, regardless of disability, who expresses a desire to pursue individual employment should be informed of, offered and linked to or authorized to receive the appropriate supports to do so (e.g., SC Vocational Rehabilitation Department, DDSN Employment Services, benefits counseling, assistive technology, etc.). ~~These supports should be identified on the individual's Case Management Assessment and Support Plan (CMAP) or Case Management Annual Assessment and Support Plan.~~

Case Managers are ~~to expected to~~ promote employment as the first and preferred outcome for working age adults receiving DDSN services. When non-work services have been selected, the possibility of pursuing employment should be explored at least annually.

DDSN Employment/Day Services Providers

Anyone, regardless of disability, who expresses a desire to pursue individual employment should be assumed to be employable and offered or referred to the appropriate supports necessary to achieve that objective (e.g., experiential and ecological assessment focused on strengths, interests and preferences; community based learning; benefits counseling (available from the SC Vocational Rehabilitation Department); customized job development; assistive technology (~~[available from the SC Vocational Rehabilitation Department, from the SC Assistive Technology NetworkProject at the University of South Carolina's Center for Disability Resources and from Medicaid assistive technology providers]~~), etc.). ~~These support needs should be identified on the individual's plan of service.~~

If an individual has been authorized to receive a Day Service other than Employment Services, but indicates a desire to pursue employment, the Day Service provider should assist the individual as needed to advocate for authorization of or referral/linkage to the supports necessary in order for employment to be pursued. Providers of all DDSN Day Services should encourage and support all whom they serve to establish and pursue a path toward employment.

~~Employment/Day Services provider agencies should seek to partner with local school systems to raise the expectations of educators, students and families concerning post-secondary employment~~

~~supports and outcomes for students with disabilities. DDSN will assist Employment/Day Services providers to facilitate the establishment of these partnerships.~~

Residential Habilitation and ICF/IID Service Providers

Residential Habilitation and ICF/IID service providers' programs should support those who desire to work as needed to obtain and maintain employment. This support may include encouragement to pursue employment, advocacy, transportation, etc. Provider policies and procedures should not in any way jeopardize a resident's prospects for obtaining and maintaining employment.

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